IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17356 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARESHBHAI BABUBHAI VAGHRI

Versus

COMMISSIONER OF POLICE BARODA

Appearance:

1. Special Civil Application No. 17356 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS PAURAMI SHETH Ld. AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 05/02/2004

ORAL JUDGEMENT

1. Heard Ms.D.R.Kachhavah, learned advocate for the petitioner and Ms.Paurami Sheth, learned AGP for respondent no.3.

2. By this petition under Article 226 of the Constitution of India, the petitioner has been challenging the detention order dated 31.7.2003 (Annexure-A) passed by respondent no.1 under Section 3(2) of the Gujart Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as "the PASA Act") and prays for setting aside of the said order and setting the petitioner at liberty.

3. The detention order (Annexure-A) as suggested from the petition has been executed on the same day and petitioner taken in detention, also served with the grounds of detention dated 31.7.2003 (Annexure-B).

4. It is submitted by Ms.D.R.Kachhavah, learned advocate for the petitioner that two registered cases have been referred in the grounds of detention, both are under Sections 380 and 457 of the Cr.P.C. It is further submitted that the statements of witness nos.1 and 2 in connection with the unregistered cases do not suggest acts violative of the "public order" and that the detention order is liable to be quashed as the alleged acts may be at the most acts concerning the maintenance of "law and order".

5. It is submitted by Ms.Sheth, learned AGP that the statements of two witnesses have been recorded for the unregistered offences alleged against the petitioner. That the statement of first witness recorded on 5.7.2003 suggests that the petitioner along with his associate beat the witness as the witness refused to keep the bag containing Gutkha; the witness raised shouts for help; the inhabitant and other persons gathered, whereupon the petitioner and his associate threatened those persons who had gathered together and asked them to run away and so saying, took out Gupti and Razor and ran after the individuals who had gathered, which led to commotion and atmosphere of fear, which led to the disturbance of public order. It is further stated that the statement of the second witness recorded on 30.6.2003, the petitioner and his associate asked the witness to keep the bag containing cigarette, soap etc. and demanded Rs.500/-, to which the witness denied, whereupon the petitioner got excited and beat the witness. That the pedestrian, passbyers and other shopkeepers of the area gathered and tried to save the witness, whereupon the petitioner and his associate took out Rampuri knife and ran after the

persons, who had come to rescue the witness, whereupon the people started running away and the traffic and the public order was disturbed.

In the submission of learned AGP the statements of both these witnesses suggest that the acts alleged are against the "public order" and therefore, the impugned detention order is justified.

6. In the case of Smt. Tarannum Vs. Union of India and Others, 1998 Cr.L.J. 1414, the Apex Court in Para.6 has reproduced the observations in the case of Smt.Angoori Devei for Ram Ratan Vs. Union of India, (1989) 1 SCC 385 as follows :

> "The impact on "public order" and "law and order" depends upon the nature of the act, the place where it is committed and motive force behind it. If the act is confined to an individual without directly or indirectly affected the tempo of the life of the community, it may be a matter of law and order only. But where the gravity of the act is otherwise and likely to endanger the public tranquility, it may fall within the orbit of the public order. This is precisely the distinguishing feature between the two concepts. Sometimes, as observed by Venkatachaliah, J. in Ayya alias Ayub v. State of U.P. (AIR 1989 SC 364 at p.370) : "What might be an otherwise simple 'law and order' situation might assume the gravity and michief of a 'public order' problem by reason alone of the manner or circumstances in which or the place at which it is carried out." Necessarily, much depends upon the nature of the act, the place where it is committed and the sinister significance attached to it.
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> As for example dare-devil repeated criminal acts, open shoot out, throwing bomb at public places, committing serious offences in pubic transport, armed persons going on plundering public properties or terrorising people may create a sense of insecurity in the public mind and may have an impact on "public order". Even certain murder committed by persons in lonely places with the definite object of promoting the cause of the party to which they belong may also affect the maintenance of 'public order'."

7. On behalf of the petitioner reliance has been placed on the decision in the case of Mustakmiya

Jabbarmiya Shaikh Vs. M.M.Mehta, Commissioner of Police and Others, XXXVI (2) GLR 1268. The Apex Court dealing with Section 2(c) and 3 of the Gujarat Prevention of Anti-Social Activities Act,1985 in the case of the petitioner against whom 3 cases were registered in Para Nos.8 and 9 observed as follows :

Para.8

"The Act has denied "dangerous person" in clause (c) of Sec.2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI of Chapter XVII of the Penal Code or any of th offences punishable under Chapter V of the Arms Act. The expression "habit" or "habitual" has, however, not been defined under the Act. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. It, therefore, necessarily follows, that in order to bring a person within the expression "dangerous person" as defined in clause (c) of Sec.2 of the Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or Chapter XVII of I.P.C. or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of I.P.C. or Chapter V of Arms Act cannot be characterized as a habitual act referred to in Sec.2 of the PASA Act.

Para.9

Sub-Sec.(4) of Sec.3 also provides that for the purpose of Sec.3, a person shall be deemed to be 'acting in any manner prejudicial to the maintenance of public order' when such person is a "dangerous person" and engaged in activities which affect adversely or are likely to affect

> adversely the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a "dangerous person" his alleged activities fall within the ambit of the expression 'public order'. A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order."

8. On behalf of the respondent reliance has been placed on the decision in the case of Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat, AIR 1999 SC 2197, and submitted that even a single act if it is found violative of the "public order" would be sufficient to hold breach of "public order" and passing of the order for detention on registration of a single case against the detenu would be sufficient to show that the detenu is a "dangerous person". It is submitted that in the instant case besides the registered case, two unregistered cases also which suggest that the detenu is a "dangerous person" and has been habitually committing the offence. In the case before the Supreme Court, the petitioner detenu belonged to a notorious gang and the members of the gang hatched conspiracy to extort money, who are engaged in building construction business in the city by putting the people under threat of fear and death, and this was found to be sufficient and held that the detenu was a dangerous person within the meaning of Section 2(c) of the Act. As far as the proposition of law as laid down in the case of Mustakmiya Jabbarmiya (Supra) cannot be disputed. A person in order to be a dangerous person under Clause (c) of Subsection 2 should be a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abates the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act.

9. In the said case, the petitioner in the incident of 10.8.1994 at 4.00 p.m. and 12.8.1994 at 7.00 p.m. is alleged to have dragged the person out on the public road and not only gave beating to him but also aimed his revolver towards the people gathered over there and in the incident of 12.8.1994 the petitioner is alleged to have rushed towards the people gathered there with the

revolver. Both these acts have been held to be the acts against the individual and not against the public order. It has been held that the acts directed against individual would not have any adverse effects prejudicial to the maintenance of public order, disturbing the even tempo of life or the peace and tranquility of the locality. Such causal and isolated incidents can hardly have any implications which may affect the even tempo of life or jeopardize the public order and incite people to make further breaches of the law and order which may result in subversion of the public order. As said earlier, the Act by itself is not determinant of its own gravity but it is the potentiality of the act which matters.

10. In the instant case also, the acts are directed against the victims i.e. the individuals and simply because the petitioner and his associate are alleged to have rushed towards the people who had gathered over there with Gupti and knife would not tantamount to an act which would affect the public order and prejudicial to the maintenance of public order and such act cannot have any adverse effect disturbing the even tempo of life or the peace and tranquility of the locality. This act would be causal and isolated incidents.

11. In view of the position of law being as above in respect of the acts directed against the individual not having any prejudicial effect on the even tempo of life prejudicial to the maintenance of public order cannot be said to be determinant of its own gravity but it is the potentiality of the act which would matter.

12. In the result, the petition is granted and accordingly allowed. The impugned order of detention dated 31.7.2003 (Annexure-A) passed by respondent no.1 against the petitioner -detenu -Nareshbhai Babubhai Vaghri is hereby quashed and set aside. The petitioner -detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)